

I have concern about this broader approach because I don't think we can address the difficulties with the intelligence community in this bill and give it to a sub-Cabinet officer to have authority to pull all the dots together and all the things that need to be done in the intelligence community. We have seen, goodness knows, over the last several months and few years the difficulties we have in those areas of collecting intelligence, analyzing intelligence, and disseminating intelligence properly. That, to me, is a very important area that is going to have to be led by the President. It is going to have to be done by the administration. I view that as somewhat separate from the homeland security effort. But we can never mesh our entire intelligence community into this new Department.

The analyses that we are going to need for the Homeland Security Department are also needed by these various intelligence communities.

These are legitimate differences of view and approach that we will have an opportunity to discuss as we proceed. But we all agree that we, No. 1, must do much better in terms of our intelligence community and capabilities government-wide; secondly, this new entity must have some new intelligence entity to assist it to do what we properly decide that it ought to be doing. We will have an opportunity to discuss that in some more detail.

I think as we proceed we can flesh this legislation out and we can make it even better than it is. Senator LIEBERMAN is correct. I think there are many things we have basic agreement on here on a bipartisan basis. There are some serious differences of view on some important areas—differences the majority of the committee took versus what the President wishes to do. I think in these times the President must be given some leeway. It is going to be a long time before we put the final period to the last sentence of this legislation. I think it will be changed, as many other pieces of legislation dealing with the Department of Defense and the Transportation Department and others have changed over the years. I think there will be amendments and changes as we go forward. But it is important that we get off on the right foot.

It is important, for example, that we give the new Department the management tools it needs. I have mentioned some of the problems we have traditionally with Government and the fact that we can't afford to bring those problems into the new Department. We can't expect to keep doing things the same old way and get different results. We don't want those inefficiencies, those overlaps, duplications, and waste, lost items, and things such as that, to follow us into the Department of Homeland Security. We can't have that happen. It won't work.

What is the answer? The answer is to give the new Department sufficient management flexibility in order to ad-

dress these issues. We have recognized this need in times past. We have given this flexibility in terms of hiring and firing and managing and compensating. Most of it has to do with compensation. A lot of people will say this is anti-employee or union-busting or what not. It has nothing to do with that. Various agencies and the GAO came to us. The IRS came to us. The FAA came to us. The Transportation Security Administration came to us. They all came to us and said: Look, we either have special circumstances or we have special problems and we need some additional tools to deal with that. We need the right people in the right place to deal with those matters.

In every one of those instances which I mentioned, Congress gave it to them. Congress gave them additional flexibilities that are not within the body of title V because we perceived those needs to be exactly as they were described to us.

Now we are pulling 22 agencies together—some of them, quite frankly, already dysfunctional—and giving out these new responsibilities. We talk about how important it is to the new Department.

My question is, If we are going to give these flexibilities to these other agencies, my goodness, why not this one, of all agencies or all departments?

The President's national security authority must be preserved. We have significant disagreement with regard to whether the traditional authority that Presidents have had since President Jimmy Carter in the national security area in terms of the justifiable need to activate collective bargaining agreements with particular entities at particular times, for good reason. Presidents have used this authority judiciously. As far as I know, there has never really been a problem with it.

This bill, as written, would take a step backwards from that authority of the President. I don't think it is fair in these times, of all times, to do that.

On the issue of the White House staff, should we force on the President a Senate-confirmed person in that position when he says he is creating a new Department and a new Secretary with all of this elaborate mechanism, and he wants his personal person—some people make the analogy with the National Security Council, for example, that it is not Senate confirmed—inside the White House working for him?

I assume, as Mr. Ridge is doing today, should we not give the President that? I believe so, after a sound intelligence approach, as I mentioned earlier, with not too many directorates, and not making this more elaborate and complex than we should.

Those are issues that we have. I think they are legitimate. I think they are important. They will be the subject of amendments as we proceed.

But, again, we do not want to look at a glass that is almost full and say that it is almost empty, because it is not. We agree on many, many important

fundamental aspects. I think it is our job to get about the consideration of it, and to improve it, to discuss these important issues and differences that we have, and come to a conclusion that is going to achieve what we are all striving for; that is, a safer United States of America.

Mr. President, I yield the floor.

Mr. LIEBERMAN. Mr. President, I thank my friend and colleague from Tennessee for his very thoughtful statement. It has been a pleasure to work with him on the Governmental Affairs Committee, both when he led the committee and in the time that I have. I look forward to working with him in the weeks ahead to achieve what we all want to achieve, notwithstanding some differences that we have today, which is to secure the future of the American people here at home.

I know that the intention was that Senator BYRD would speak next. He is not on the floor at the moment. I note the presence of the Senator from Texas.

Mr. THOMPSON. I would ask that the Senator from Texas be given as much time—

Mr. GRAMM. Why don't I take up to 10 minutes. Every time I have ever heard anybody say they will not use it, they talk more. But certainly everything I would want to say or should say or am competent to say I can say in 10 minutes.

Mr. LIEBERMAN. Very well. Then it would be our understanding, after the Senator from Texas has completed his statement, that Senator BYRD will be recognized.

Mr. THOMPSON. Yes.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I will withhold for a moment.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I greatly appreciate my friend from Texas withholding. He has always been very courteous. Today is no different than any other time.

#### ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that the Senate proceed to executive session, today, at 12:30 p.m. to consider Executive Calendar No. 962, Terrence McVerry, to be a United States District Judge; that the Senate immediately vote on confirmation of the nomination, that the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, any statements thereon be printed in the RECORD, with the preceding all occurring without any intervening action or debate, and that upon the disposition of the nomination, the Senate resume legislative session and stand in recess until 2:15 p.m.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, as in executive session, I ask unanimous consent

that it be in order to request the yeas and nays on the nomination at this time.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I do, therefore, ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, whenever a bill comes to the floor from a committee, obviously, a lot of people have had an opportunity to have an input in it. It is always easy for people who do not serve on that committee to stand on the outside and jeer and throw rocks through the windows. And we are going to have a long debate. I think this bill is going to change dramatically. So rather than spending my time being critical of the product, I would like to just talk about some basic principles, sort of where I am coming from and what I hope can happen.

First of all, when September 11 occurred, it sort of awakened the country to a threat we always knew was there. But there is nothing like seeing your fellow countrymen suffer to focus the mind on a challenge that too often we chose to pretend did not exist. I think we all concluded, in the wake of September 11, that our country had changed, perhaps forever. Part of that change had to do with coming up with an effective response.

Free societies are vulnerable to terrorist attacks. There is nothing we can do about that since we are going to remain a free society.

The President, who has the responsibility under the Constitution, as Commander in Chief, to defend the homeland, spent time and effort in getting together the best people, at least in his mind, that he could assemble, and he came up with a plan. That plan involved bringing all or part of 22 agencies together in a new Homeland Security Department.

I know there are many people who have many different views, and that is what makes democracy strong. But I would like to begin with the point that the one person who has the constitutional responsibility, the one person who has access to more information than anybody else in our society, made a proposal; and that is the President's proposal.

In my mind, under these circumstances, and in this clear and present danger that we face, I believe—no blank check, no guarantee we are going to do it just as the President wants it—we ought to bend over backwards to try to accommodate the man who has the constitutional responsibility and is ultimately going to be given the credit or the blame by the American people based on what happens.

The President primarily asked for three things. One, he wanted flexibility

in reorganizing these Departments. The flexibility wanted was substantial, but it was not without precedent. We had given similar flexibility to the Department of Energy, which was created from other Departments. We had given similar flexibility to the Department of Education, which was created in part by transfer and part by creation. Yet, remarkably, the bill that is before us denies the President the same flexibility that the President had when the Departments of Energy and Education were created.

Now, energy is important, especially if you are in an energy crisis. Education is always important. But is there anybody who really believes the crisis we face is so unimportant that President Bush should not have the same powers in setting up the Department of Homeland Security that the President had in setting up the Department of Energy? I do not think many people take that position, but we have a problem in that the bill before us takes that position. In my mind, that has to be fixed.

I understand reasonable people with the same facts are prone to disagree, but, as I look at this first request of the President, that he be given enhanced flexibility, not dissimilar to what we had with the Department of Energy and the Department of Education, to me, that is pretty close to a no-brainer that the President ought to have that flexibility.

The second request is that the President have the power, based on national security, to override labor agreements. Now, that sounds like a pretty dramatic power. In fact, the way opponents normally talk about it, it is basically giving the President the power to eliminate collective bargaining. In my mind, nothing could be further from the truth. All this power does is gives the President the power to set aside elements of collective bargaining when national security is involved.

Interestingly enough, the power the President sought he has under existing law. The President was simply asking for an affirmation of existing power. But, remarkably, in the wake of 9/11, not only did the committee not reaffirm this existing power but they took power away from the President in saying that whereas today, whereas on September 11, or September 10, the President could have waived collective bargaining agreements for national security purposes, under this bill he would not be able to do that. But the prohibition would apply only to the Department of Homeland Security.

I submit there is always room for disagreement, there is always room for some negotiation in trying to understand what other people think, but, to me, it is incomprehensible and absolutely unacceptable that we should be setting up a Department of Homeland Security and at the same time take away power the President has under existing law to take action based on national security concerns.

The provision taking away the President's national security powers simply does not fit in this bill. I do not think it fits in any bill. But in a bill that is trying to respond to 9/11, it clearly does not fit and cannot be accepted and will never be accepted. Clearly, that is something that has to be fixed.

Let me give you some examples. We currently have labor contracts negotiated with Government employee labor unions that prohibit the stationing of Border Patrol in areas that do not have laundries, that do not have access to personal services. There is a long list of things that were written.

Now, in normal circumstances, where you have people trying to lead a quality life like everybody else, you can understand those things. The ability to take your clothes to the drycleaners is pretty important when you are wearing uniforms that require drycleaning. But in an emergency circumstance, do we really not want to have the power to waive that collective bargaining agreement?

Another thing that has constantly driven me crazy, being in a border State—a huge border—with Mexico, is that trying to get the Border Patrol, INS, and Customs all to work together, trying to get them to cross-train so that people can perform various functions, is like trying to get them to use the same toothbrush. In fact, President Clinton's National Security Adviser talked about his frustration in dealing with the INS and Customs and the unwillingness of one agency to open the trunk in working with another agency.

Now, look, I understand work rules. I admit I am probably less sympathetic to them than most other people. I think if you sign onto a job, whatever the job requires, within the limits of human dignity, you ought to be willing to do. I don't understand negotiating about who pushes what button or who opens what trunk. To me that seems silly. I am not very sympathetic to it. But when we are dealing with national security concerns, when the lives of our fellow citizens are at stake, we cannot put up with that business.

So all the President is asking for is the power to set aside those kinds of agreements in dealing with national security. It is not a question of being anti-union, it is a question of having concerns that override collective bargaining. We don't have collective bargaining for the Marines because they are about very serious, life-threatening circumstances and tasks. In dealing with homeland security, we are dealing with exactly those kinds of circumstances.

Finally, the President's proposal asks for personnel flexibility—the ability to put the right person in the right position at the right time, without waiting for the normal 6 months, and the right to transfer people who are incompetent, and the right to fire people.

I understand collective bargaining, and I understand writing in requirements of how the personnel system

works. I understand trying to prevent people from being arbitrary and capricious. But the bottom line is, if we are trying to fight and win this war on terrorism, we need to have the ability to hire, fire, and promote based on merit in those agencies that are involved. I will give you two examples.

A woman FBI agent sends a cable to the home office basically saying that maybe we ought to be concerned about people with terrorist connections who are taking flight training and are focusing on flying planes but not landing them. That actually happened. In the whole process of trying to absorb massive amounts of information with conflicting jurisdiction, nobody ever responded to it. But don't you think we ought to promote that woman? Don't you think we ought to promote her out of grade and reward her—not only to reward the fact that she was paying attention to her business, she was alert to a potential problem that, God knows, we wish we had been alerted to, and we want to send a signal to others in the FBI and other agencies that if you are doing a good job, we are going to reward you.

On the negative side—and I don't want to belabor it because I don't know the circumstances and I am not at INS. I don't know the individual life stories of the people involved or the problems they had or the bureaucracy they faced. But, look, when we granted visas to terrorists who had their picture on every television screen in the world, whose names are on the front page of every newspaper in America because they had killed over 3,000 of our citizens, and then weeks later we processed a visa request for these brutal terrorist/murderers, maybe somebody should have been fired. Maybe somebody should have been transferred.

I know that theoretically in the Federal Government you can fire people, but the reality is that it is virtually impossible. As everybody in the Senate knows, fewer than 1 percent of people who are found to be doing totally unsatisfactory work end up being fired in the Federal Government, and 80 percent of them, because of the momentum of the seniority system, end up getting raises after they have been deemed to be doing failing work.

In the Department of Homeland Security, where we are dealing with people's lives, we need the flexibility to promote and reward. And, quite frankly, despite all the protests from the labor unions, every time I talk to people in Government agencies who would be affected, they like this flexibility, they like rewarding merit, they believe they would benefit and thrive in this system.

I will conclude by simply saying this: The President is not saying do it my way or forget it. I think the President has been and will be flexible in terms of trying to work out an agreement. I think there is room for flexibility on the whole funding issue and reprogramming and the rights of the legislative

branch. But when you get down to the ability to reorganize, the President is not going to accept a bill that gives him less power in the name of national security than the President had when we created the Department of Energy. He is not going to do that, and he should not do it. There is no possibility that the President is going to accept a bill that takes away emergency powers that he has today to waive collective bargaining agreements in a bill that claims to enhance the President's power to deal with national security.

Finally, we gave flexibility on personnel under the FAA reorganization bill, under the IRS reorganization bill, and under the Transportation Security Administration reorganization bill. Yet in a bill trying to deal with homeland security, do we think it is less important than the FAA, or the IRS, or the Transportation Security Administration? Well, obviously, if you look at this bill, we do. So I don't think it is productive for this to degenerate into any kind of partisan battle.

But the problem is, this is a bill that does not do the job. This is a bill that we would be better off—if it were adopted in its current form—not having. The President is not going to accept this bill, and I think we have reached the moment on a critical issue where we need simply to promote a bipartisan solution, work out these agreements, give the President these three powers he wants, work something out on the appropriations issue for enhanced reprogramming and a partnership, and preserve the ability of Congress to control the purse.

I think the President, for every one problem he will have with money, will have 100 problems dealing with reorganization and personnel flexibility.

I am hopeful we can work something out. We are going to be offering a series of amendments. I assume at the end we will offer a substitute. I hope that substitute will be broadly supported. Senator MILLER and I, along with almost 40 of our colleagues, have introduced the President's bill because we wanted to try to promote a compromise moving in the President's direction.

I thank Senator THOMPSON for his leadership on this issue. As I have followed what he has had to say, there is not any issue on which I have a substantive disagreement with him. I look forward to following his leadership as we work out these three key issues, but these issues have to be dealt with. There cannot be a bill that does not give the President reorganization flexibility, the ability to override collective bargaining agreements in the name of national security and personnel flexibility. Denying these three powers simply is a denial of common sense and a denial of the crisis as we all know it exists, and the bill has to be changed.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Tennessee.

Mr. THOMPSON. Madam President, I ask unanimous consent that the time

used by the Senator from Texas not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. THOMPSON. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. Madam President, I was in error when I asked that the time of the Senator from Texas not be charged against anyone. I think that should be charged against the time of Senator LIEBERMAN and myself. I ask unanimous consent that be done.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. Madam President, I am getting ready to suggest the absence of a quorum again, and I ask unanimous consent that the quorum call we are about to go into not be charged against either side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THOMPSON. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Madam President, I thank the majority leader for the courtesies which have been extended to all Senators, myself in particular because I am the one I know most about, naturally, in listening to our concerns with respect to the legislation that is before the Senate.

I am glad Members of this body had the opportunity during the August recess to study the House bill, to study the substitute that will be posed eventually by the distinguished Senator from Connecticut, Mr. LIEBERMAN, which substitute, of course, is the product of his very great committee and the product in particular of the ranking member, Mr. THOMPSON of Tennessee, on that committee.

I proceed today with a great deal of humility, realizing that I am not a member of the committee. I have no particular reason, other than the fact that I am 1 of 100 Senators who speaks on this matter today with no particular insight from the standpoint of being on the committee which has looked at this legislation. I have read the newspapers. I have read and heard a great deal about what the administration wants. I have done the best I could during the August break, in addition to several other responsibilities I had, to read the House legislation and the substitute which will be proposed by Mr. LIEBERMAN.

So I say to the members of the committee, and to Mr. LIEBERMAN and to Mr. THOMPSON in particular, I respect the work they have done.

I believe one of the two Senators today said there have been 18 hearings of the committee. I was not present at those hearings.

I respect the work of the committee. I have been a Member of Congress 50 years. I know something about committees. I know something about committee hearings. I know something about the time and the energy that are put into hearings by the Members, as well as by the staffs of the members of the committee and the personal staffs of the Senators. I approach this subject today somewhat timidly because I am not on the committee but I am a Senator and I have been very concerned. The reason I am here today is that I am very concerned about how we go about creating the Department of Homeland Security.

First of all, I am very much for a Department of Homeland Security, and I think I made that position clear many weeks ago. I had some concerns with respect to the proposal the House sent over after 2 days of debate on the House floor.

I had some concerns about the appropriations process. Senator STEVENS, distinguished ranking member of the Appropriations Committee, and I have joined in informing Mr. LIEBERMAN and Mr. THOMPSON of our concerns. Mr. STEVENS is a member of Mr. LIEBERMAN's committee. We informed them of our concerns in writing. They have taken our concerns, studied them, and for the most part have dealt with our concerns. So from this moment on, I will have no more to say about the appropriations process because the Lieberman bill, in great measure, puts that thing right.

I have other concerns. I am very concerned President Bush has been promoting his Homeland Security by citing the National Security Act of 1947 as a role model for Government reorganization.

In his weekly radio address on June 8, for example, President Bush stated that he was proposing "the most extensive reorganization of the federal government since the 1940s. During his presidency, Harry Truman recognized that our nation's fragmented defenses had to be reorganized to win the Cold War. He proposed uniting our military forces under a single Department of Defense, and creating the National Security Council to bring together defense, intelligence, and diplomacy."

President Bush is correct to hold up the National Security Act as a role model. Here it is. It is the perfect example of why we must move slowly and carefully in reorganizing our government and avoid acting too swiftly or blindly. A look at the history of the unification of the armed forces reveals that government reorganization is not as quick, or as simple and easy as President Bush may have implied.

Enactment of legislation providing for the unification of the military did not occur in a matter of weeks, nor even months, but years.

On November 3, 1943, the Army Chief of Staff, General George C. Marshall, broke with long-standing War Department anti-unification policy and submitted to the Joint Chiefs of Staff a proposal favoring a single Department of War. In his book, *The Politics of Military Unification*, Demetrios Caraley writes: "The conflict over military unification that eventually led to the passage of the National Security Act of 1947 can be said to have begun November 3, 1943." In other words, this was the beginning of what would become a four-year struggle in the effort to reorganize our government by unifying our armed services.

In April 1944, the War Department submitted a unification proposal to the House Select Committee on Postwar Military Policy. That same month, the Committee began two months of hearings on the creation of a single department of the armed forces. The committee concluded that the time was inappropriate for legislation on a single department, strongly implying that such a reorganization might be a distraction from the war effort, and, therefore, should wait until the war was over. The Committee report reads in part:

The committee feels that many lessons are being learned in the war, and that many more lessons will be learned before the shooting stops, and that before any final pattern for a reorganization of the services should be acted upon, Congress should have the benefit of the wise judgment and experience of many commanders in the field.

I point out that, more than two full years had elapsed since General Marshall's proposal, and there had been considerable congressional and administrative activity, including a number of studies, a number of alternate proposals, and a number of hearings, yet Congress at this stage was nowhere close to approving the reorganization of our government.

On June 15, 1946: President Truman, in a letter to congressional leaders, recommended a 12-point program for unification. But considerable opposition to reorganization still remained, and as a result, President Truman eventually requested that the Senate drop consideration of military unification until the next session of Congress.

The next year, February 26, 1947, in a communication to congressional leaders, and I was a member of the West Virginia state legislature, President Truman submitted a unification proposal, which became the National Security Act of 1947, that had been drafted by representatives of the armed forces and had been approved by the Secretaries of War and Navy, and the Joint Chiefs of Staff.

Did you catch that? President Truman submitted a proposal that had been drafted, not by four people in secrecy in the basement of the White

House, but by representatives of the armed forces and had been approved by the Secretaries of War and Navy, and the Joint Chiefs of Staff.

What a difference in Administrations! What a difference in attitudes toward government!

After President Truman's proposal was introduced in both houses of Congress, the Senate Committee on Armed Services began hearings that lasted for ten weeks. The House Committee on Expenditures in the Executive Departments also conducted hearings on the proposal that lasted from April 2 to July 1, 1947.

Meanwhile, on May 20, 1947, the Senate Committee on Armed Services commenced an executive session "to review the testimony received in extensive hearings on the bill and to consider proposed amendments."

Let me say that again: The Senate Committee on Armed Services commenced an executive session—*whoa*—"to review the testimony received in extensive hearings on the bill and to consider proposed amendments."

Again, I call attention to how slowly, how carefully, and how deliberately Congress was proceeding on this important issue involving the national security of our country. Senators can read the report of the Senate Committee on Armed Services on S. 758 which stressed this very point. The report reads, in part: "In determining the most suitable organization for national security no effort has been spared to uncover past mistakes and shortcomings. During the hearings . . . all phases of each plan were exhaustively examined."

Let me repeat that. The Senate Committee reported that "no effort has been spared to uncover past mistakes and shortcomings" and "all phases of each plan were exhaustively examined." The committee was pointing out that Congress knew what it must do. That there would be no rush to judgment. They were not about to be stampeded into unwise legislation. There was no herd mentality there. They knew that what they were doing would help decide the fate of American government and American society for decades to come. They knew that, as the Nation's lawmakers—and that is what we are, the Nation's lawmakers—they had to be careful and deliberate because so much was at stake.

On July 9, 1947, after debate and amendments, the Senate finally approved the National Security Act.

The House of Representatives was just as careful and deliberate in considering this reorganization of our Government. The reason, the House Committee on Expenditures in the Executive Departments pointed out in its report, was that "both civilian and service witnesses advised against a too-hurried consideration of the bill."

Finally, on July 19, 1947, the House began considering H.R. 4214, the committees's version of the President's draft bill. It approved the measure only

after considering 17 amendments. Nine of the amendments were approved.

On July 24, 1947, after five meetings, a conference committee reported a compromise version of S. 758 and so The House adopted the conference report.

Two days later, President Truman signed the National Security Act into law, one half year after the legislation had been introduced, and four years since General Marshall recommended unification of our armed forces.

I realize we do not have 4 years to act in this situation. I realize the situations are different in many ways; the circumstances are different in many ways. I know that. But this is a government reorganization that President Bush holds up as the role model for the present government reorganization which we are considering. The problem is that this administration envisions Congress approving in just a few weeks a massive reorganization of the Federal Government that involves 22 agencies and 170,000 Federal workers.

The administration should stop reading "Gulliver's Travels" and start reading some history, especially the history behind the unification of our Armed Forces. If it is going to use that as the role model, the National Security Act—the reorganization of our military, the establishment of a Department of Defense—we should read the history behind the unification of these Armed Forces. It is a cautionary tale, and one that the administration and we would do well to remember.

I am very concerned that 30 years from now, Congress will be struggling to rectify the problems that we will be creating with hasty, ill-considered enactment of the Department of Homeland Security. There was all this rush, there was all this hue and cry that we ought to get this done before Congress goes out for the August recess. The House passed this bill after 2 days of floor debate and took off a week earlier than the Senate did. Then there was the idea we ought to do this by September 11.

What we need to do is to develop a product that works. We need to have legislation enacted by Congress and signed by the President that is right, not something that is hurriedly passed just to conform with an artificial deadline on the calendar. How much harm could be done in the meantime can be imagined. I am referring to damage to the rights and the liberties that we hold most dear: civil rights, labor rights, labor protection, civil liberties of all Americans. I am talking about damage to our constitutional process. We can inflict damage upon the constitutional process if we act in haste, and that damage perhaps cannot be and will not be rectified for years to come. We must not inflict damage on our constitutional processes.

President Bush's proposed Department of Homeland Security is an enormous grant of power to the executive branch. I hope that everyone who hears

me will understand that—an enormous grant of power to the executive branch. It constitutes control of 170,000 Federal workers and a huge piece of the Federal budget. It will mean a major change in the governmental infrastructure of our Nation.

This may be for keeps. This may be the infrastructure that will last through the lifetimes of at least some of us. And we cannot and must not close our eyes to the threats that are involved here, by well-intentioned people I am sure, the threats to the constitutional processes that have guided this Nation for 215 years and should continue to guide it in the future.

This Constitution is good enough to guide us through whatever emergencies may confront this country. We must not cede this power, power that the administration wants but not necessarily needs—but the administration wants it. Let's stop, look, and listen and be careful what we are doing.

I wonder how many out of 100 Senators took the time during the recess to read the House bill, to read the substitute that is about to be proposed by Mr. LIEBERMAN and Mr. THOMPSON. How many Senators took the time to read and to ponder what we are about to do? I did. I am not an expert on the House bill or the substitute by Mr. LIEBERMAN. I have not put as much time, naturally, by any means, in my study of the Lieberman substitute as has he or his counterpart or the members of that committee.

So the members of that committee knew very well what was in the bill. But how many other Senators took the time to sit down and read and mark and underline and think about the words, the phrases, the sentences that are included in this substitute and in the underlying bill?

Let Senators remember that once we pass a bill in the Senate, which we must and which we will, then we in the Senate—half of the legislative branch, this half, except for the committee conferees—will be out of it. I don't bemoan the fact that I will be out of it, but most of the Senate will be out of it. We will have said our piece. We will have made our press releases. And we will have had an opportunity to offer amendments.

But how many of us are prepared to offer amendments? How many of us have read this legislation? How many in the media know what we are talking about and what is in this legislation? The people out there, 280 million of them, who are represented by 100 Senators, do not have the slightest idea what is encompassed in this legislation. They have heard the President on the campaign trail talking about this bill: pass it, pass it, pass it. They have heard others in the administration. I don't have any criticism of that. They naturally want this bill passed.

We need to look at it. We Senators have a duty to study it and to take the time and, if necessary, offer amendments where we believe amendments

should be offered and the Senate must be given the opportunity to work its will. And it will work its will.

But I am concerned. That is where I am coming from, and I am sure there are other Senators who would be equally concerned if they read these bills. But they have been busy. Senators are very busy people. I know that.

In a recent column, David Broder wisely pointed out that because the mission of the Department of Homeland Security "is so large and its scale is so vast, it is worth taking the time to get it right."

That is David Broder, and he got it right when he said that. I will continue with his words.

It is worth taking the time to get it right. Having the bill on the President's desk by the symbolic first anniversary of the terrorist attacks is much less vital than making the design as careful as it can be.

Hallelujah. That was David Broder. He is right.

Now let me read what he said without my editorial comment. He said: "... the mission of the Department of Homeland Security "is so large and its scale is so vast, it is worth taking the time to get it right. Having the bill on the president's desk by the symbolic first anniversary of the terrorist attacks is much less vital when making the design as careful as it can be."

I remind my colleagues that once the genie is out of the bottle, it is gone. It would be difficult to get it back into the bottle. This bill is the best, if not the last, opportunity for Congress to make sure that we are not unleashing a genie, a very dangerous genie.

I realize it is not easy to go against the administration for some of my colleagues, in an election year especially. But our duty to our country and to future generations compels us to do no less. And I intend to do no less than stand on my feet and speak my thoughts. This is what separates the men from the boys, the women from the girls, and the statesmen from the politicians.

Madam President, how much time do I have remaining?

What is the time situation with respect to the upcoming vote?

The PRESIDING OFFICER. We are going into executive session at 12:30.

Mr. BYRD. I thank the Presiding Officer.

Madam President, I hope Senators will take a look at this morning's Washington Post. On the front page there is a column by Gregg Schneider and Sara Kehaulani Goo, Washington Post staff writers. The headline reads as follows:

Twin Missions Overwhelmed TSA. Airport Agency Strives to Create Self, Stop Terror.

This story that I am about to take excerpts from tells exactly why we ought to take time and do this right.

I read from the column:

When a gunman opened fire at a Los Angeles International Airport ticket counter on July 4, the nation's new agency in charge of airport security got its first chance to swing into action.

Instead, it claimed the shooting was outside its jurisdiction.

After bullets sprayed across the crowded holiday terminal, killing three, the agency's director at the time, John W. Magaw, looked on helplessly as his own spokesmen dismissed the incident as a matter for local police and the FBI. "That's nuts. That is nuts," Magaw said later.

But by that holiday, with the nation on edge about a terrorist attack, Magaw had lost control of the Transportation Security Administration. He had run the high-profile, multibillion-dollar agency far astray from what Congress and the Bush administration said they wanted, alienating everyone from local airport operators to commercial airline pilots.

Now get this. I continue to read:

The agency simply couldn't keep up with the twin demands of creating itself and devising a system of stopping terrorists.

There you are in a nutshell. That is the problem.

Internally, there was tension over the TSA's mission, with a growing core of leaders steeped in law enforcement at odds with political forces demanding customer service. Magaw and his deputies clashed with key members of Congress and the White House over budgets and left airport managers around the country feeling shut out.

The fact that the TSA was flat-footed on the day of the most violent attack on U.S. aviation since Sept. 11 underscores how, after nearly a year of building a new federal agency to take over airport security, few broad changes have taken place.

There you are. That is our problem. We are about to create a new department of homeland security, which I am for. I will vote for that. Then we are about to create 6 directors, and we are about to set up a superstructure. In this bill, once we pass the package and send it down to the President, we are going to say there it is. You take it. It is yours. Then the administration will have the colossal task of transitioning, as I read it, 22 agencies.

I was talking with Senator LIEBERMAN this morning. I was told that more likely there will be 28 agencies and offices. There you have it, Mr. Administration. It is yours. That is what Congress is about to do. It is yours.

Can one imagine the chaos that is going to occur when all of these agencies are supposed to be transitioned into the department of security within 13 months, and the people within them. One-hundred and seventy thousand Federal employees will have to become accustomed to a new culture, once they are transitioned. They will have to move their desks, their computers, and their telephones. They will have to get acquainted with new associates. They will have new and different missions.

When we talk about the 1947 role model of the National Security Act, we are talking about military branches that had the same mission, overall. Those were not different missions. These people are going to be put into a brand spanking new, polished-chrome metal piece of toy to guard the homeland, and to guard the people. All of these people put into one agency are going to be concerned about their pay scales, their worker rights, and their

privacy rights—all of those things. There they will be. All yours, Mr. President. Here it is. You asked for it. Here it is now so Congress can stand on the sidelines for the next 13 months.

I am saying no. Congress should not stand on the sidelines for the next 13 months. We have a duty under the Constitution to exercise oversight and to see that the agencies are properly brought into the six directories.

I am thinking of the same directorates the committee recommended, the same superstructure. I am saying that is fine. But now, when it comes to bringing in the 22 agencies or the 28 agencies or the 30 agencies or the 25 agencies—I have heard all of these numbers; we do not even know the number of agencies—when it comes to fusing those, what are the criteria for this agency or that agency or some other agency or some part of that agency? What are the criteria by which somebody is going to have to be guided in bringing these agencies into the superstructure and making them part of the directorates, which are parts of the new Department of Homeland Security?

Who knows? I have not seen anything in my reading, anything in writing. I have not heard anything in any way by which these 22 agencies—I will say 28, since Mr. LIEBERMAN has counted them. What are the criteria and what is going to happen?

Look at what the Post is reporting happened to the brandnew, shiny transportation agency, the TSA. And here we are talking about 22 or 25 or 28 or 30 more agencies, putting them all in. Here, Mr. President. Here is what you asked for. Here is the bill. You take it. That is what we are about to do, and I do not think we should do it.

I think Congress should stay in the mix, should continue to exercise its oversight, its judgment, give its advice, give its consent, and vote up or down as we go along on the procedure.

Now, I am going to offer an amendment at some point. I may offer several amendments, but the first amendment I offer will deal only with title I, only with title I. But my concern is that Congress has a responsibility, it has a duty to which it must face up, and that duty is to keep a hand on this, to maintain oversight. And I think these 22 agencies—I will quit using 22; I am going to use JOE LIEBERMAN's figure, 28—these 28 agencies should be phased in, in an orderly process that gives the Congress the time, as we go along, to look at what the administration—through this new Secretary of Homeland Security, through his recommendations—recommendations are.

Congress should not just hand this thing over lock, stock, and barrel, to this administration, or any other administration, and say: Here it is. You take it.

So here, in microcosm, is the problem. And we are reading about it right here in this Washington Post of today. I won't read the whole column right now. I may refer to it again later.

But let me proceed now by saying that the homeland security legislation that we will be considering this week has become something much more than mere legislation. It has become a political windstorm blowing down Pennsylvania Avenue and through the Halls of Congress.

The President's proposal has been barreling through Congress like a Mack truck, threatening to run over anyone who dares to stand in its way. And Congress, so far, has cleared a path and cheered on this rumbling big rig, without stopping to think seriously about where it is ultimately headed. Now we are going to think seriously about it.

The President assures us that he is safely behind the wheel, and that all we need to do is give him the "flexibility"—I use his word, "flexibility"—he needs to fight terror immediately, and he will handle it from there.

While the President's assurances may help some people sleep better, I am left tossing and turning on my pillow at night. I fear terrorism as much as anyone, and I recognize the need for constructive, decisive action in these daunting times. But lately I have also been plagued by the fear that, in the name of homeland security, we may be jeopardizing liberties from within our own Government by unwittingly trading in many of the constitutional protections which were designed by the Founding Fathers as safeguards against the dangerous tendencies of human nature.

In Federalist No. 48, James Madison wrote:

It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it.

Now, that is James Madison:

It will not be denied that power is of an encroaching nature and that it ought to be effectually restrained from passing the limits assigned to it.

The President is clearly attempting to remove the limits on his power. I don't question his good intention. Maybe he doesn't understand what he is doing. But this is clearly an attempt to remove limits on the Executive's power, and Congress is doing very little, up to this point, to restrain the administration's ambitions.

I am alarmed that the President is demanding such broad authority over an unprecedented amount of resources and information, while at the same time asking us to eliminate existing legal restrictions to allow him the "managerial flexibility" to respond to changing threats. His proposal gives the Secretary of Homeland Security almost unlimited access to intelligence and law enforcement information without adequate protections against misuse of such information. I am willing to give the President necessary authority to secure the Nation's safety, but I believe we can give him flexibility without giving him a blank check.



In Federalist No. 48—and Senators and Representatives and other people should read the Federalist Papers once again—in Federalist No. 48 here is what he said:

An elective despotism was not the government we fought for. . . .

Nobody is suggesting there be an elective despotism. But I am suggesting that we better go very carefully, as we legislate on this proposal, that we do not release to the executive branch, by legislation, powers that the Constitution guards against.

This is what Madison says:

An elective despotism was not the government we fought for. . . .

We can, in this Senate, very well pass legislation that ends up giving to any President—I am not just talking about Mr. Bush—the powers that amount to an elective despotism. That is what I am concerned about in this legislation—one of the things.

An elective despotism was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy as that no one could transcend their legal limits without being effectually checked and restrained by the others.

Now, that is what I am saying Congress needs to be aware of. We need to be on guard that we do not pass legislation that, in the end, gives a President—and there is no assurance that this President will be President forever; he may be President for 2 more years or maybe 6 more years. Who knows. But the Congress must be on guard in this legislation—I know it is very tempting to vote without further delay, without any argument, vote for a new department of homeland security. And we ought to have it. But it will be very easy for Congress to pass legislation that, in the end, results in elective despotism. Madison warns us against it.

The President's proposal cripples internal oversight offices and weakens external legal controls on the Department, including unnecessary exemptions from public disclosure laws such as the Federal Advisory Committee Act and the Freedom of Information Act, allowing the Secretary to exercise his broad authority in relative secrecy.

In many of these areas, Senator LIEBERMAN's committee, working with Senator THOMPSON, has brought in a bill that is, in my judgment, much better than the administration's proposal, which is largely reflected by the House bill. And at the end of the day, the House bill will be before the Senate—at some point, Mr. LIEBERMAN will offer his substitute—so that the Senate will have before it both the House bill and the Lieberman proposal.

So what I am saying is not altogether, or even in great part, criticism of the product the committee has given to the Senate. I am stating my concerns. We cannot brush aside the House bill. It is going to be in conference, and we are going into conference, and these

conferees are going to be up against the House conferees—the House, which is under the control of the other party, which is in control of the White House. So I do not envy the challenges that are going to be before our Senate conferees. I am speaking of my concerns with respect to one or both of these measures that will be before the Senate.

These exemptions reflect the administration's strong antagonism toward traditional "good government" and "sunshine" laws that attempt to cast light on government activities and subject them to public scrutiny. The administration is seizing on this legislative opportunity to weaken these important laws.

The administration is attempting to gut the traditional protections for personal privacy and civil rights abuses from the new Department, and the bill that was passed by the House of Representatives effectively dismantles most of these safeguards. Unfortunately, the Senate doesn't do enough, in my judgment, to restore those checks.

The Senate bill does require, very generally, that the Secretary and the directorate for intelligence establish rules and procedures for governing the disclosure of sensitive information. Some of this language restricts the use of information to only authorized and "official" purposes, but this restriction is meaningless because the vague authority given to the Secretary allows him to claim that almost anything he wants to do constitutes an "official" purpose.

In pressuring Congress to pass homeland security legislation, the administration is using the "war on terror" as a red herring to draw attention away from the underlying objectives of the administration's proposal, which include expanding the regime of secrecy that has been established by the White House to the 22, 25, 28, or 30 agencies of the new Department of Homeland Security.

Once the Department has been legally shrouded in secrecy, the President can take advantage of his broad access to information and its vague mission and authority to command the "war" without scrutiny from Congress or the public.

The President has proclaimed that we are entering a "new era," one that will resemble the cold war in its concerns for national security. His proposal marks a disturbing start for this era and I am afraid may be a sign of things to come. The cold war began with an iron curtain descending over Europe. Under this bill, the war on terror may have begun with an iron curtain descending around our Government.

Congress must not defer to executive judgment alone. Congress must not trust that this administration, or any other administration, will always act in the best interest of the Nation. Absolute trust and unquestioning def-

erence are dangerous gifts for the legislature to bestow on the executive, even when our leaders have given us no reason for doubt.

Good intentions do not guarantee good government. As Madison tells us in Federalist No. 51:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: You first enable the government to control the governed; and in the next place, oblige it to control itself. A dependence on the people is no doubt the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.

Madam President, Justice Brandeis echoed Madison's warning of the dangers of relying on the good intentions of government. He wrote:

Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding.

I suspect that this administration means well in its desire to mobilize the Government against terror, but so many in the administration have come lately—not all, but some. I fear that some of what the administration is asking for is a danger to the people's liberty.

In our rush to reorganize the Government, we seem to have forgotten the principles upon which the Government was founded. The Constitution established a system of divided Government, a system that feared tyranny more than it favored efficiency. The Constitution's separation of powers and checks and balances were not designed to provide managerial flexibility to any President, Democrat or Republican. They were designed to limit the power of the state over its citizens by ensuring that individual liberties could not be easily abridged by the unchallenged authority of any one branch of Government.

President Harry Truman proposed the most dramatic reorganization of the last century, creating the Department of Defense and the CIA in response to the new threats of the cold war. But even after he presided over such a critical moment of national security, he remained skeptical of the need for efficiency and flexibility in the executive branch. Truman said:

When there's too much efficiency in government, you've got a dictator. And it isn't efficiency in government we're after, it's freedom in government. . . .

That is Truman. That is my favorite Democratic President in our time. Following him came Mr. Eisenhower, who I have—at least lately—come to believe was the greatest Republican President in our time.

I continue with Truman's words:

And if the time ever comes when we concentrate all the power for legislating and for

justice in one place, then we've got a dictatorship and we go down the drain the same as all the rest of those republics have.

Madam President, the administration's proposal makes clear to me that it is not freedom in Government the administration is after.

The Secretary of Homeland Security will become a human link between the FBI, the CIA, and local police departments, serving as a "focal point" for all intelligence information available to the United States. I am concerned that in this role he may be able to circumvent existing legal restrictions placed on those agencies to protect individual privacy, civil rights, and civil liberties.

The Homeland Security Department will be authorized to draw on the resources of almost any relevant agency at the Federal, State, and local level, ranging from sensitive international intelligence compiled by the CIA and the NSA to surveillance of U.S. citizens by the FBI and local police. Many of these agencies were very purposely kept separate and distinct, or were given limited jurisdiction or investigative powers, in order to reduce abuses of power. However, when the Department—this new Department—draws on the resources and information of other agencies, it may not necessarily be subject to the same legal restraints imposed on those agencies.

In addition, the civil rights officer and the privacy officer established under the administration's plan to uncover abuses in the Department are not given enough authority to actually carry out their jobs. They are essentially advisers with no real investigative or enforcement power. Both officers are responsible for ensuring compliance with existing law, but their only legal recourse after identifying a problem or violation is to report the problem to the Department's inspector general.

However, the inspector general, in turn, is under no obligation to follow up on privacy and civil rights complaints, only an obligation to inform Congress of any "civil rights abuses" in semi-annual reports. If and when the IG does choose to investigate, he will often be unable to do so independently as the Inspector General Act intended, because this plan provides that the inspector general will be "under the authority, direction, and control of the Secretary"—now get that. That ought to be enough to curl your hair. Let me read that again. The inspector general will be "under the authority, direction, and control of the Secretary"—meaning the Secretary of Homeland Security—"with respect to audits or investigations, or the issuance of subpoenas, which require access to sensitive information." And the Secretary can say no if he determines certain things, which I can read into the RECORD—he determines; if he determines, the Secretary; if he determines no, the inspector general is stopped in his tracks. That is it. Is that the way the people in this country want it to be? I do not believe so.

Granting the Secretary control over internal investigations puts the "fox in charge of the hen house" whenever the fox claims a national security reason for it.

The inspector general can say: I have a national security reason. You have to stop. You cannot investigate further. You cannot subpoena witnesses. You cannot because Congress passed the law that the administration wanted saying you cannot. So you stop right here in your tracks.

Is that the way the American people want it? No.

The President's proposal also lets the fox have his way when he uses working groups—now get this—to investigate or craft policy. Although not included in the Senate bill, the House bill, which will be before the Senate likewise, allows the Secretary of Homeland Security to exempt advisory groups within the Department from the disclosure requirements of the Federal Advisory Committee Act. The practical effect of this authority would be to give the Secretary of Homeland Security the ability to conduct secret meetings to craft Department policy, minimizing interference from Congress and the public.

This would appear to expand the model of secret policymaking currently employed in the administration, the most notable example being Vice President CHENEY's secret energy working group.

While the Federal Advisory Committee Act does exempt the Central Intelligence Agency and the Federal Reserve from disclosure requirements, the justification for doing so cannot support providing the same exemption for the Department of Homeland Security.

The broad authority and domestic jurisdiction of the Department distinguish it from the CIA which has no authority to invade the privacy of U.S. citizens domestically and whose activities are controlled more directly by the President in exercise of his constitutional powers over foreign affairs. The exemption for the Federal Reserve protects financial information and economic projections in order to protect the integrity of the markets.

While it may be reasonable to excuse the Fed from this kind of public disclosure, I am not comfortable in allowing the Secretary of Homeland Security to set the level of preparedness in complete secrecy in the same way that Alan Greenspan sets interest rates.

The Federal Advisory Committee Act already allows waivers for sensitive information, so there is no compelling national security justification for providing this blanket exemption. Removing this exemption would not eliminate the Secretary's ability to convene committees in secret, but it would make the Secretary and the President more accountable—more accountable—for choosing to do so.

The President is authorized under existing law to determine which committees should be exempt from disclosure

for national security reasons, and he must explain himself every time he does so. The bill passed by the House allows the Secretary to exempt committees at will, while only paying lip-service to Congress. Both the House bill and the Senate bill provide an unnecessary exemption, in my viewpoint, from the Freedom of Information Act for critical infrastructure information provided by private corporations.

The FOIA requires public disclosure of Government materials on request, but it already provides exemptions for national security information, sensitive law enforcement information, and confidential business information. The administration's proposal extends these exemptions to include any information voluntarily submitted by corporations to the Department. As a result of this exemption, this corporate information could not be released under the Freedom of Information Act for other enforcement purposes, so corporations would be allowed to escape liability for any information they submit.

I have argued, Madam President, that parts of this bill should be put off to allow enough time for informed deliberation. I reaffirm my objections to rushing into all of these agency transfers and new directives. However, these secrecy problems have to be addressed also.

The President has said that how we respond to this crisis will determine what kind of legacy we leave. I agree with the President on that point. That is exactly why I suggest to the Members of the Senate we should take time to remember the legacy that we have inherited, a legacy of liberty and limited Government, and preserve these principles in the legacy that we will bequeath.

This new Department is going to be with us for some time, so we must think beyond the next election and act with an eye to the future. This Congress needs to make sure we will have some recourse in the event that the administration's reorganization does not live up to all of its promises. Congress has a role to play in the ongoing supervision of the Federal Government, and we should not compromise that role by hastily surrendering our constitutional powers.

I yield the floor.

#### EXECUTIVE SESSION

NOMINATION OF TERRENCE F. McVERRY, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

THE PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will proceed to executive session to consider Executive Calendar No. 962, which the clerk will report.

The assistant legislative clerk read the nomination of Terrence F.